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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVID VINCENT HAWKINS,

Defendant and Appellant.

E046368

(Super.Ct.No. FWV801451)

OPINION

APPEAL from the Superior Court of San Bernardino County. Raymond P. Van Stockum, Judge. Affirmed.

Wilson Adam Schooley, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Steve Oetting and Meredith A. Strong, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant, David Vincent Hawkins, was sentenced to a stipulated term of four years in prison in return for his guilty plea to a charge of assault by means of force likely

to produce great bodily injury (Pen. Code,<sup>1</sup> § 245, subd. (a)(1)), and his admission that the crime was committed for the benefit or at the direction of a criminal street gang. (§ 186.22, subd. (b)(1).) After being sentenced, defendant sought to withdraw his plea by way of a petition for writ of error coram nobis, which was denied. Defendant appeals the denial of the petition claiming the trial court abused its discretion by failing to conduct an evidentiary hearing on the petition. We affirm.

## BACKGROUND<sup>2</sup>

Defendant was charged with assault with a deadly weapon. (§ 245, subd. (a)(1).) It was further alleged that the defendant personally inflicted great bodily injury (§ 12022.7, subd. (a)), and that the crime was committed for the benefit or at the direction of a criminal street gang (gang enhancement). (§ 186.22, subd. (b)(1).) On June 4, 2008, the date set for the preliminary hearing, defendant entered into a negotiated plea agreement.

Pursuant to that agreement, the People orally amended the complaint to add count 2, alleging an assault by means likely to produce great bodily injury (§ 245, subd. (a)(1)), with a gang enhancement allegation. (§ 186.22, subd. (b)(1).) The defendant pled guilty to count 2, and admitted the gang allegation. In return for the guilty plea and admission,

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<sup>1</sup> All further statutory references are to the Penal Code, unless otherwise specified.

<sup>2</sup> Defendant pled guilty prior to the preliminary hearing, and waived the right to have a probation report prepared due to the stipulated sentence, so the facts of the offense are not presented in the briefs. Since they are irrelevant to our analysis, we dispense with the factual history leading to defendant's arrest.

the People agreed to dismiss the remaining counts and allegations, and the parties stipulated that the sentence would be four years in state prison.

The change of plea form further indicated that no one had used any force or violence or threats or menace or duress or undue influence of any kind to induce the plea, and that defendant had had sufficient time to consult his attorney. These acknowledgements were made orally at the hearing, as well. Upon accepting defendant's change of plea, the court sentenced him forthwith to a term of four years in prison on count 2, and stayed the term for the gang enhancement.

On June 23, 2008, defendant informed the court he wished to withdraw his plea, so the court appointed an attorney from the conflicts panel to bring a formal motion. A month later, defendant filed a petition for writ of error coram nobis to reverse the plea, on the ground defendant did not know he could have personally requested a continuance to consider his options and to seek new counsel. At the hearing, the petition was denied. Defendant appealed from the sentence or other matters occurring after the plea.

## DISCUSSION

On appeal, defendant claims the trial court erred by failing to conduct an evidentiary hearing on his petition for writ of error coram nobis. He contends he made a prima facie showing he was entitled to relief in the trial court based on coercion by the prosecutor, and his ignorance that he could have requested a continuance. Respondent contends the petition raised no newly discovered facts, or factual errors or omissions, and points out that defendant failed to object or to specifically request an evidentiary hearing, thus forfeiting that issue. Even if the defendant had preserved a request for an

evidentiary hearing, the lack of a prima facie showing in support of the petition justified the trial court's discretionary denial of relief.

A writ of error *coram nobis* permits the court that rendered judgment to reconsider it and give relief from errors of fact. (*People v. McElwee* (2005) 128 Cal.App.4th 1348, 1352.) The allegedly new fact must have been unknown and must have been in existence at the time of the judgment. (*People v. Kim* (2009) 45 Cal.4th 1078, 1093.) It does not lie where a defendant voluntarily and with knowledge of the facts pleaded guilty because of ignorance or mistake as to the legal effect of those facts. (*People v. Banks* (1959) 53 Cal.2d 370, 378.)

In other words, a writ of error *coram nobis* is not a writ “whereby convicts may attack or relitigate just any judgment on a criminal charge merely because the unfortunate person may become displeased with his confinement or with any other result of the judgment under attack.” (*People v. Kim, supra*, 45 Cal.4th at p. 1092, quoting *People v. Hayman* (1956) 145 Cal.App.2d 620, 623.) A writ of error *coram nobis* is reviewed under the standard of abuse of discretion. (*People v. Ibanez* (1999) 76 Cal.App.4th 537, 544.)

To be entitled to relief by way of *coram nobis*, the defendant must meet three requirements: (1) He must show that some fact existed which, without any fault or negligence on his part, was not presented to the court at the trial on the merits, and that would have prevented the rendition of the judgment; (2) that the newly discovered evidence does not go to the merits of issues tried; and (3) that the facts upon which he relies were not known to him and could not in the exercise of due diligence have been

discovered by him at any time substantially earlier than the time of his motion for the writ. (*People v. Shipman* (1965) 62 Cal.2d 226, 230.) In a *coram nobis* proceeding, the defendant must show prejudice, that is, he must establish he would not have entered the plea had he been aware of the true facts. (*People v. Castaneda* (1995) 37 Cal.App.4th 1612, 1622.)

A petition for a writ of error *coram nobis* may be an appropriate procedure for a postjudgment challenge to a guilty plea allegedly induced by mistake, fraud, or coercion. (*People v. Chaklader* (1994) 24 Cal.App.4th 407, 409.) However, in such cases, the new fact usually relates to an unkept promise or a misrepresentation by a public official. (See *People v. Wadkins* (1965) 63 Cal.2d 110, 113.)

In the present case, defendant refers to representations made by the prosecutor at the time of the plea that new charges could be filed, which made defendant feel coerced to change his plea. This was not a misrepresentation. Further, there is nothing in the record to support defendant's assertions because the prosecutor made no such representations on the record. (See *People v. Chaklader, supra*, 24 Cal.App.4th at p. 412 [defendant's assertion that the court and prosecutor promised his sentence would run concurrent with any federal sentence refuted by lack of record of any such representations].)

More importantly, at the time of the plea, the defendant denied that anyone had coerced or threatened him in order to induce him to plead guilty, in writing. He also advised the court both orally and in writing that he had had sufficient time to discuss his case with his attorney. The record contradicts both asserted grounds for the petition.

It is within the trial court's broad discretion to hold an evidentiary hearing upon a determination that the petition established a prima facie showing. Where the petition is without merit, it should be summarily denied. (*People v. Shipman, supra*, 62 Cal.2d at pp. 230-231.) Defendant implies that denial of the evidentiary hearing deprived him of the opportunity to prove that he had been coerced into pleading guilty. However, he was not "denied" an evidentiary hearing. To the contrary, he submitted on the pleadings, forfeiting any right to such a hearing. Nor was an evidentiary hearing required to address the matters raised by defendant in his personal letter to the court, where he asserted that the prosecutor threatened to add charges if defendant did not change his plea.

None of the matters raised in the petition or in defendant's letter are based on newly discovered facts, since defendant indicated he was aware of the prosecutor's inducement at the time he pled guilty. Even if the prosecutor had made such a representation to the defendant, a plea does not become involuntary because the defendant decides to accept the certainty of a lesser penalty rather than risk a conviction and a higher penalty authorized by law for the crime charged. (*In re Cowans* (1970) 2 Cal.3d 733, 740.) The "coercion" experienced by defendant was no more or less pressure than every other defendant faces with serious felony charges and the offer of a plea bargain. (*People v. Huricks* (1995) 32 Cal.App.4th 1201, 1208.)

As to the assertion that defendant did not know that he could have personally requested a continuance, the allegation is contradicted by the transcript of the plea proceedings in which defendant informed the court that he had had sufficient time to discuss his case with his attorney. To say defendant was unaware he could personally

request more time, in the face of a change of plea form that expressly states he has had adequate time for discussion with the attorney, is not a new fact, it is a change of mind. *Coram nobis* is not intended to remedy buyer's remorse.

The defendant failed to make a prima facie showing he was entitled to relief by way of a writ of error *coram nobis*. Absent a prima facie showing, the court was justified in summarily denying the petition. (*People v. Shipman, supra*, 62 Cal.2d at pp. 230-231.) Also, because an evidentiary hearing was not requested, the court was not required to hold one. (*People v. Superior Court (Zamudio)* (2000) 23 Cal.4th 183, 201.) The court did not abuse its discretion by failing to hold an evidentiary hearing.

#### DISPOSITION

The judgment is affirmed.

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s/Gaut  
J.

We concur:

s/Richli  
Acting P. J.

s/Miller  
J.